Supreme Court, U.S.
FILED
SEP 25 2000
OFFICE OF THE CLERK

No. 00-513

IN THE

Supreme Court of the United States

LEVI STRAUSS & CO.,

Petitioner,

v.

AGUSTINA TREVINO, HERMINIA HERRERA, BEATRIZ OLIVAREZ AND GLORIA GUAJARDO,

Respondents.

On Petition for Writ of Certiorari from the United States Court of Appeals for the Fifth Circuit

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

FILED
SEP 30 1996
Michael N. Milby
Clerk of Court

ENTERED
OCT 2 1996
Michael N. Milby
Clerk of Court

AGUSTINA TREVIÑO,	§	
HERMINIA HERRERA,	§	
BEATRIZ OLIVAREZ,	§	
and GLORIA GUAJARDO,	§	
PLAINTIFFS,	§	CIVIL ACTION NO.
	§	M-95-262
VS.	§	
	§	
LEVI STRAUSS & CO.,	§	
DEFENDANT.	§	

ORDER

This memorializes the Court's prior oral ruling on plaintiffs' motions to remand. Plaintiffs' initial Motion to Remand (Docket Entry No. 5) was premised on the contention that the only remaining claim being asserted in this action is a workers' compensation wrongful discharge claim that is nonremovable pursuant to 28 U.S.C. § 1445(c). Plaintiffs' Supplemental Motion to Remand (see Docket Entry No. 16) further asserts that the notice of removal filed by defendant Levi Strauss & Co. ("Levi Strauss") is defective in that unsigned copies of collective bargaining agreements were attached.

Levi Strauss opposes plaintiffs' motions and has submitted extensive briefing. Levi Strauss's principal contention is that plaintiffs' claims pursuant to the Texas Workers Compensation Act (Chapter 451 of the Texas Labor Code) are completely preempted by § 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 158. According to Levi Strauss, plaintiffs' claims are inextricably intertwined with collective bargaining agreements that governed the terms and conditions of each of the plaintiffs' employment with Levi Strauss. It is unnecessary to decide the LMRA preemption issue, however, in order to resolve plaintiffs' motions to remand.

"Whether the case was properly removed is determined by reference to the allegations in a plaintiff's state court pleading." Tedder v. F.M.C. Corp., 590 F.2d 115, 116 (5th Cir. 1979) (citation omitted). Here, plaintiffs' original state court petition included a claim for intentional infliction of emotional distress.[1] As plaintiffs' counsel has candidly acknowledged, the Fifth Circuit and other courts have routinely found such claims to be preempted when brought in the context of a collective bargaining agreement. See, e.g., Thomas v. LTV Corp., 39 F.2d 611, 619 (5th Cir. 1994) (citing cases). This is because such claims require an employee to prove wrongful conduct by the employer, which in turn requires interpretation of a collective bargaining agreement. Id. Such a circumstance is present here. In light of this, the Court concludes that, at the critical time of removal, plaintiffs' state court petition asserted at least one claim that was completely preempted by federal law and thus

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[1] After the case was removed to federal court, plaintiffs moved for leave to file amended pleadings that eliminated the intentional infliction of emotional distress claim.

the entire case was properly removable. See 28 U.S.C. § 1441(c).[2]

Accordingly, plaintiffs' motion to remand and supplemental motion to remand are DENIED to the extent that they claim that remand is mandatory under the circumstances of this case.

The Court will address by separate order whether plaintiffs' remaining retaliatory discharge claim is preempted by federal labor law, which is an issue raised by Levi Strauss's pending motion to dismiss. Depending on the resolution of this issue, it may be necessary to address whether discretionary remand is appropriate in this case. See 28 U.S.C. § 1367(c).

DONE this 30th day of September, 1996 at McAllen, Texas.

/s/

Peter E. Ormsby
UNITED STATES MAGISTRATE JUDGE

[2] Based on the record in this case, the Court finds no merit in plaintiffs' argument that removal was defective because Levi Strauss failed to submit with its notice of removal signed copies of the relevant collective bargaining agreements.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ENTERED
FEB 20 1997
Michael N. Milby
Clerk of Court

AGUSTINA TREVIÑO,	§	
HERMINIA HERRERA,	§	
BEATRIZ OLIVAREZ,	§	
and GLORIA GUAJARDO,	§	
Plaintiffs,	§	
	§	C.A. M-95-262
vs.	§	
	§	
LEVI STRAUSS & CO.,	§	
Defendant.	§	

ORDER

After considering the pleadings on file, the argument of counsel, the applicable law, and for the reasons stated orally at the hearing held February 12, 1997, the Court enters the following rulings:

Defendants' Motion to Dismiss For Failure To Exhaust Grievance And Arbitration Remedies (Doc. No. 14) is DENIED.

Plaintiffs' Motion To Remand (Doc. No. 5) and Supplemental Motion To Remand (Doc. No. 16) were

previously denied to the extent those motions urged that remand is mandatory under the circumstances of this case. The motions are now DENIED to the extent they seek discretionary remand.

Defendants' Motion For Summary Judgment Against Plaintiff Herminia Herrera (Doc. No. 17), Motion For Summary Judgment Against Plaintiff Beatriz Olivarez (Doc. No. 18), Motion For Summary Judgment Against Plaintiff Agustina Treviño (Doc. No. 19), and Motion For Summary Judgment Against Plaintiff Gloria Guajardo (Doc. No. 19) are hereby DENIED without prejudice to defendants' right to reassert these motions after plaintiffs have had the opportunity to conduct further discovery.

Defendants' Motion For Leave To File Reply In Support Of Motion To Dismiss (Doc. No. 21) is GRANTED in that the Court has considered that brief in connection with these rulings.

Defendants' Motion For Dismissal With Prejudice of Claims Against Individual Defendant and Claims For Negligence and Intentional Infliction of Emotional Distress (Doc. No. 31) is unopposed and is GRANTED. It is hereby ORDERED that all claims against defendant Mike Ramos are DISMISSED and plaintiffs' claims alleging negligence and intentional infliction of emotional distress are likewise dismissed as to defendant Levi Strauss & Co. ("Levi Strauss").

Defendant Levi Strauss' motion to stay further discovery pending Court ruling on Motion To Dismiss (Doc. No. 42) was previously granted orally during a telephone conference on May 23, 1996. That stay of discovery is now lifted and the

case shall proceed as set out in the Scheduling Order entered this date.

DONE this 19th day of February, 1997 at McAllen, Texas.

/s/
Peter E. Ormsby
UNITED STATES MAGISTRATE JUDGE

App. 11.1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ENTERED
OCT 17 1997
Michael N. Milby
Clerk of Court

AGUSTINA TREVIÑO,	§	
HERMINIA HERRERA,	§	
BEATRIZ OLIVAREZ,	§	
and GLORIA GUAJARDO,	§	
Plaintiffs,	§	CIVIL ACTION
	§	NO. M-95-262
vs.	§	
	§	
LEVI STRAUSS & CO.,	§	
Defendant.	§	

ORDER

Pending are defendant Levi Strauss & Co.'s renewed motions for summary judgment as to each plaintiff. The Court has carefully considered all the relevant pleadings on file, the argument of counsel, and the controlling law. For the reasons stated orally during the conference held August 25, 1997, the Court concludes that, viewing the summary judgment evidence in the light most favorable to plaintiffs, defendant is nevertheless entitled to judgment as a matter of law as to each plaintiff.

It is, therefore, ORDERED that each of the following motions is hereby GRANTED:

- Defendant's Renewed Motion for Summary Judgment Against Plaintiff Agustina Treviño (Doc. #61),
- Defendant's Renewed Motion for Summary Judgment Against Plaintiff Herminia Herrera (Doc. #62),
- Defendant's Renewed Motion for Summary Judgment Against Plaintiff Beatriz Olivarez (Doc. #63),and
- Defendant's Renewed Motion for Summary Judgment Against Plaintiff Gloria Guajardo (Doc. #64).

All other pending motions are DENIED as moot.

DONE this 15th day of October, 1997 at McAllen, Texas.

/s/

Peter E. Ormsby
UNITED STATES MAGISTRATE JUDGE

App. 12.1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ENTERED
OCT 17 1997
Michael N. Milby
Clerk of Court

AGUSTINA TREVIÑO,	§	
HERMINIA HERRERA,	§	
BEATRIZ OLIVAREZ,	§	
and GLORIA GUAJARDO,	§	
Plaintiffs,	§	CIVIL ACTION
	§	NO. M-95-262
vs.	§	
	§	
LEVI STRAUSS & CO.,	§	
Defendant.	§	

FINAL JUDGMENT

For the reasons set forth in the Order entered this date and stated on the record at the conference held August 25, 1997, the Court renders final judgment for defendant on all claims and awards the defendant its costs.

DONE this 15th day of October, 1997 at McAllen, Texas.

/s/
Peter E. Ormsby
UNITED STATES MAGISTRATE JUDGE

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